Public Prosecutor v Chandran s/o Arjunan

HIGH COURT (SHAH ALAM) — CRIMINAL APPEAL NO 45–42 OF 2006
ABANG ISKANDAR JC
24 SEPTEMBER 2007

Criminal Procedure — Sentence — Principles of sentencing — Plea of guilt — Extent of mitigating factors — Justification of term of imprisonment — Discount in terms of reduced sentences

The accused was initially charged with an offence of murder under s 302 of the Penal Code ('the Code'). However, in the midst of the trial, the prosecution tendered an alternative charge under s 304(a) of the Code which provides for a maximum penalty of life imprisonment on conviction for culpable homicide not amounting to murder. The alternative charge, was read and explained to the accused person who had indicated that he had understood the said alternative charge and had decided to plead guilty at the first instance of asking. Thus, the court proceeded to record a conviction against him on his own plea of guilty. After hearing the submission from both the prosecution and the accused, the court proceeded to sentence the accused.

Held, convicting the accused:

(1) By pleading guilty, the accused person had saved the court's time and the public expense, not to mention inconvenience to the witnesses who had to come to court in order to prove the charge against the accused person. This indicated that the accused was remorseful and was willing and ready to be dealt with according to law (see para 8).

(2) Section 304 of the Code gave the court a wide discretion to determine the term of imprisonment. However, the court must act judiciously and in accordance with the relevant sentencing practice in determining the sentence to be imposed. An important aspect of sentencing was the public interest which required that an appropriate sentence, commensurate with the offence, be meted out (see paras 17 & 22).

(3) A discount will be allowed for a plea of guilty. However, where it is necessary and if the maximum sentence is passed in order to protect the public, a plea of guilty may not result in any discount. Applying the principle in the case of *Pendakwa Raya lwn Ooi Kwang Lai* [2000] 6

MLJ 622 to the facts of the present case, the conduct of the accused, taken as a whole would not have forfeited his 'privilege' to a discount. Further applying the principle in *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167, the court had deducted about a quarter of the sentence of 15 years which would have been imposed had the accused been found guilty after a full trial. Therefore, a sentence of 12 years would be just and appropriate (see paras 23–24).

[Bahasa Malaysia summary

Tertuduh pada mulanya dituduh dengan satu kesalahan bunuh di bawah s 302 Kanun Keseksaan ('Kanun tersebut'). Walau bagaimanapun, di pertengahan perbicaraan, pihak pendakwaan telah mengemukakan satu pertuduhan alternatif di bawah s 304(a) Kanun tersebut yang memperuntukkan hukuman maksimum penjara seumur hidup atas sabitan untuk homisid salah yang tidak membawa kepada pembunuhan. Pertuduhan alternatif, telah dibaca dan diterangkan kepada tertuduh yang telah menunjukkan bahawa beliau faham pertuduhan alternatif tersebut dan telah memutuskan untuk mengaku salah semasa kali pertama ditanya. Oleh itu mahkamah terus merekodkan sabitan terhadapnya atas pengakuan salahnya sendiri. Selepas mendengar penghujahan daripada kedua-dua pihak, iaitu, pendakwaan dan tertuduh, mehkamah menjatuhkan hukuman terhadap tertuduh.

Diputuskan, mensabitkan tertuduh:

(1) Dengan mengaku salah, orang yang dituduh telah menjimatkan masa dan perbelanjaan awam, tidak perlu disebutkan kesusahan kepada saksi-saksi yang terpaksa datang ke mahkamah bagi tujuan membuktikan pertuduhan terhadap orang yang dituduh. Ini menunjukkan bahawa tertuduh telah menyesal dan sanggup serta bersedia untuk dibicarakan menurut undang-undang (lihat perenggan 8).

(2) Seksyen 304 Kanun telah memberikan mahkamah budi bicara luas untuk menentukan tempoh masa pemenjaraan. Walau bagaimanapun, mahkamah hendaklah bertindak dengan bijak dan menurut amalan menghukum yang relevan dalam menentukan hukuman yang akan dijatuhkan. Aspek terpenting dalam menghukum adalah kepentingan awam yang memerlukan hukuman yang setimpal dengan kesalahan harus dilaksanakan (lihat perenggan 17 & 22).

(3) Pengurangan akan dibenarkan untuk pengakuan salah. Walau bagaimanapun, di mana diperlukan dan jika hukuman maksimum telah dijatuhkan untuk melindungi orang awam, pengakuan salah mungkin

tidak akan membawa kepada pengurangan. Dengan mengaplikasikan prinsip di dalam kes *Pendakwa Raya lwn Ooi Kwang Lai* [2000] 6 MLJ 662 kepada fakta kes ini, tindakan tertuduh, secara keseluruhannya tidak akan merampas 'keistimewaan' untuk diskaun. Selanjutnya dengan mengaplikasikan prinsip di dalam kes *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167, mahkamah telah menolak sebanyak suku daripada hukuman penjara 15 tahun yang sepatutnya dijatuhkan jika tertuduh didapati bersalah selepas perbicaraan penuh. Oleh itu, hukuman penjara 12 tahun adalah adil dan sesuai (lihat perenggan 23–24).]

Notes

For cases on principles of sentencing, see 5(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 3944–4039 and 4289–4311.

Cases referred to

Charan Singh v State of Punjab AIR 1975 SC 255; 1974 Cr LJ 1253 (refd)
Chee Yong Choong v PP [1964] 1 LNS 82 (refd)
Mohamed Abdullah Ang Swee Kang v PP [1988] 1 MLJ 167 (folld)
Pendakwa Raya lwn Ooi Kwang Lai [2000] 6 MLJ 622 (folld)
PP v Leo Say & 2 Ors [1985] 2 CLJ 155 (refd)
PP v Nordin Kamsan & Ors [1983] CLJ 669 (refd)
PP v Pujiono bin Kamsan & Ors [2003] 5 MLJ 475 (refd)
PP v Ravindran & Ors [1993] 1 MLJ 45 (refd)
R v Costen (1989) 11 Cr App R (S) CA 182 (refd)
R v Kenneth John Ball (1951) 35 Cr App R 164 (refd)
R v Sarjeant (1974) 60 Cr App R 74 (refd)
Ralon bin Banas v PP [2000] 3 MLJ 241 (refd)

Legislation referred to

Penal Code ss 302, 304, 304(a)

Mohd Iskandar Ahmad (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.
T Vijayandran (Vijay & Chan) for the accused.

ABANG ISKANDAR JC:

[1] The accused person in this case was initially charged with an offence of murder under s 302 of the Penal Code. The prosecution had commenced and nine prosecution witnesses had been called and examined to prove that offence against him. However, in the midst of PW9 giving evidence, the prosecution tendered an alternative charge under s 304 first limb of the Penal Code (s 304(a) of the said Code) which provides for a maximum penalty of life imprisonment on conviction for culpable homicide not amounting to

murder. The alternative charge, which was duly marked as P22, was read and explained to the accused person who had indicated that he had understood the said alternative charge and had decided to plead guilty at the first instance of asking. The said alternative charge, P22, reads as follows (in its original language):

PERTUDUHAN PILIHAN

Bahawa kamu pada 11 April 2006 jam lebih kurang 4.30 pagi hingga 5.30 pagi di rumah No 31, Jalan Seri Banang 11, Taman Seri Andalas, di dalam daerah Klang, di dalam negeri Selangor Darul Ehsan telah menyebabkan kematian Chandran a/l Nagan @ Nagapan (KPT: 670927–10–6621) dengan niat menyebabkan kecederaan tubuh badan yang mungkin menyebabkan kematiannya, dan oleh yang demikian kamu telah melakukan homisid salah yang tidak terjumlah kepada kesalahan membunuh yang boleh dihukum di bawah s 304(a) Kanun Keseksaan.

[2] Having ascertained that the accused person had understood the consequences of his plea of guilty, and that I was satisfied with such plea having been given voluntarily with complete appreciation by the accused of his action, I invited the prosecution to present the facts of the case. That was so done and the facts were tendered and marked as P23, which is now produced *in extenso* as follows:

(1) Pada 11 April 2006 jam lebih kurang 7.25 pagi ketika pengadu iaitu L/Kpl Ibrahim bin Salleh yang ketika itu sedang bertugas di Pusat Kawalan Daerah Ibu Pejabat Polis Daerah Klang, telah menerima satu panggilan telefon dari seorang anggota bomba Taman Seri Andalas, Klang yang menyatakan telah menemui satu mayat lelaki dipercayai India di rumah No 31, Jalan Seri Banang 11, Taman Seri Andalas, Klang yang terbakar. Pengadu kemudiannya telah memaklumkan maklumat ini kepada pegawai atasan untuk tindakan lanjut.

(2) Berdasarkan kepada maklumat tersebut sepasukan polis telah pergi ke alamat tersebut pada jam 10.30 pagi mendapati rumah tersebut merupakan rumah teres dua tingkat dan terdapat kesan-kesan terbakar di ruang tamu, perabot dan tingkap. Di bahagian ruang tamu rumah tersebut, pihak polis telah menemui mangsa yang dalam keadaan tertiarap di atas lantai dan dipercayai telah meninggal dunia. Terdapat kesan terbakar pada belakang badan si mati.

(3) Berdasarkan kepada keterangan, rumah tersebut didiami oleh si mati dan isterinya sahaja. Pada 6 April 2006 jam lebih kurang 2 petang, OKT telah datang ke rumah tersebut untuk berjumpa si mati dan berlaku pertengkaran. Lebih kurang satu jam kemudian OKT telah datang semula ke rumah tersebut dan memberitahu mangsa bahawa dia hendak menumpang di rumah mangsa selama beberapa hari.

(4) Keterangan juga menunjukkan pada tengah malam 10 April 2006 OKT dan si mati dilihat bergaduh dan bertengkar hingga ke bahagian luar rumah. Kejadian ini dilihat oleh seorang jiran si mati. Pada jam lebih kurang 6.30 pagi 11 April 2006, jiran yang sama telah mendengar jeritan isteri si mati meminta tolong. Apabila jiran ini sampai di rumah tersebut, dia melihat api di kawasan ruang tamu dan telah mengambil air untuk cuba memadamkan kebakaran. Dalam masa yang sama, isteri si mati yang berada di tingkat atas telah mencampakkan anak kunci bagi membolehkan pintu dibuka bagi membolehkan bantuan diberikan. Mayat si mati telah ditemui dalam keadaan tertiarap di ruang tamu dengan kesan terbakar.

(5) Selepas kebakaran dipadamkan, mayat si mati tersebut dihantar ke Hospital Tengku Ampuan Rahimah, Klang untuk bedah siasat. Bedah siasat ke atas jasad mayat telah dijalankan pada jam 12 April 2006 jam lebih kurang 9.15 pagi oleh Dr Khairul Azman bin Hj Ibrahim. Sebab kematian ialah *compression of neck*. Keterangan bedah siasat juga menunjukkan lidah si mati terjelir dan boleh diakibatkan oleh tekanan yang kuat pada leher. Pemeriksaan luaran juga mendapati terdapat calar yang panjang pada bahagian depan sebelah kanan leher si mati.

(6) Daripada keterangan yang ada, pada malam tersebut OKT dan si mati bertengkar dan bergaduh. Dalam pertengkaran tersebut, masing-masing telah mengeluarkan kata-kata yang kesat yang menyebabkan OKT merasa sakit hati. OKT seterusnya telah mengambil sebatang kayu dan memukul bahagian belakang badan si mati. Kemudian OKT mengambil seutas tali dan menjerut leher si mati menyebabkan si mati tidak bergerak. Dalam keadaan tersebut, OKT telah meletakkan si mati di atas timbunan kusyen dan membakar kusyen tersebut sebelum melarikan diri.

(7) OKT mengetahui bahawa melalui perbuatan ini ianya boleh menyebabkan kematian kepada si mati kerana leher adalah bahagian tubuh manusia yang paling sensitif dan boleh membawa kematian jika diberi tekanan, dijerut atau dicekik. Tambahan pula keadaan fizikal si mati yang kudung sebelah kaki sudah pasti tidak dapat melawan atau melarikan diri. Keterangan ini jelas menunjukkan si mati tidak berkesempatan untuk mempertahankan diri atau untuk mengelak pukulan yang bertubi-tubi dari OKT. OKT tidak mempunyai niat untuk menyebabkan kematian tersebut, tetapi mempunyai niat untuk menyebabkan kecederaan yang boleh menyebabkan kematian, perbuatan OKT memukul si mati adalah kerana rasa sakit hati akibat perbuatan si mati yang mengeluarkan kata-kata kesat di mana perbuatan OKT telah menyebabkan kematian kepada si mati. Keterangan ini adalah selari dengan sebab kematian yang diberikan oleh

pathologist. Si mati juga disahkan telah meninggal dunia terlebih dahulu sebelum dibakar oleh OKT.

(8) Oleh yang demikian, OKT telah melakukan satu kesalahan yang boleh dihukum di bawah s 304(a) Kanun Keseksaan.

[3] The learned deputy also tendered the relevant exhibits connected with the case. Again, the accused person had admitted to the facts adduced as correct together with the relevant exhibits, although learned counsel had indicated that he would raise some minor points on the facts but which would not go to impact on the root of the charge so as to qualify the plea of guilty.

[4] I was satisfied with the admission made by the accused person and I had therefore proceeded to record a conviction against him on his own plea of guilty and on the facts as admitted by him which to my mind had constituted the offence as per the alternative charge P22.

[5] Both parties then proceeded to submit on the appropriate sentence that I should impose against this accused person.

[6] Having had the benefits of hearing those submissions by both learned counsel and deputy, I had decided to impose against the accused person an imprisonment term of 12 years with effect from the date of his arrest.

[7] The learned public prosecutor had since indicated his displeasure with the sentence which I had meted out on this accused person by filing a notice of appeal. Thus this appeal before Your Lordships and my grounds justifying the sentence which I had deemed fit to impose against this accused person cum respondent.

[8] Let me begin with the plea in mitigation as submitted by learned counsel. He had submitted that by pleading guilty, the accused person had saved court's time and public expense, not to mention inconvenience to the witnesses who had to come to court in order to prove the charge against the accused person. In the context of this case, the accused person had pleaded guilty on the first instance that the alternative charge was read to him. To my mind that move by him indicated that he was remorseful and was willing and ready to be dealt with according to law.

[9] Bearing in mind the facts adduced by the prosecution, this case could not be categorised as an open and shut case. This is not a case where it could be said with all certainty that the accused had no plausible defence whatsoever. The facts as adduced in P23 would also show that the accused

person and the deceased were friends. Indeed the accused/respondent had been staying with the deceased in the latter's house for a few nights prior to the fateful event that occurred in the wee hours of the morning in question on the 11 April 2006. As was apparent from the facts adduced, an argument had erupted between them and a quarrel had ensued after each of them had hurled abusive words against each other. A scuffle then ensued as a result of which the accused had caused a longish laceration on the deceased's neck which in turn had fractured the right horn of thyroid cartilage of the deceased. This he did by using a piece of string. Paragraphs Nos 5 and 6 in the facts of the case, as in P23 would bear these out. The pathologist Dr Khairul Azman bin Hj Brahim, in his report, which was duly tendered and marked as P15, had attributed this as the cause of death of the deceased and he had described the cause of death of the deceased as having been due to 'compression of neck'. It is also a fact that the deceased was a handicap, who had one of his legs amputated, but that had nothing to do with his death. Neither did the fire that was caused by the accused/respondent have anything to do with the death of the deceased as was clearly borne out in the same pathologist's report, P15. The autopsy had revealed that 'Grossly there was no soot in the oral cavity and the larynx'. In simple layman's understanding that would translate to mean that when the fire was set the deceased had already died, thus explaining the absence of any traces of soot or hydrocarbon in his respiratory tract as he had ceased to breathe any longer when the fire started. It may be assumed that the accused could have tried to destroy the evidence of his crime. The learned deputy, to his credit made no issue of this fact. If anything, it may be relevant to show subsequent conduct tending to show the accused person's state of mind. But as the accused person had pleaded guilty, its evidential value had thereby taken a backseat, so to speak. It could indeed have become a subject matter of a separate offence against the accused/respondent but that was a matter entirely within the sole province of the public prosecutor and its exercise was exclusively left to his discretionary wisdom depending on the circumstances and the dictates of public interest then prevailing.

[10] Now, going to the matter whereby learned counsel had indicated that he would raise something relating to the facts of the case as presented by the prosecution, it is connected with the quarrel between the accused person and the deceased immediately before the death of the latter. The fight ensued as a result of the exchange of abusive words between them which had angered the accused person. To a certain extent there was an element of provocation. But that was as far as the learned counsel had pursued the matter, more as a mitigating factor rather than as a serious defence to the charge. It had to be borne in mind that the accused person had surrendered himself to the police three days after the incident at Balai Polis Klang to assist in the investigations. Learned counsel also raised the issue of hardships that could be caused to the family of the nine accused should a longish imprisonment be imposed.

But Justice NH Chan in the case of *Public Prosecutor v Leo Say & 2 Ors* [1985] 2 CLJ 155, had said that such plea should not find favour from the court because the accused should have been wiser before the event. Was it not but Shakespeare, who had through one of his characters, offered us this acute observation: '*after the event, even a fool is a wise man*.'

[11] On those submissions and on the strength of past authorities cited by him, learned counsel for the accused/respondent had urged me to impose a sentence of not more than 10 years.

[12] On the other hand, the learned deputy had urged me to impose a deterrent sentence as to do so would be in the public interest. It was also highlighted to me that the accused/respondent had taken unfair advantage against the deceased bearing in mind that the accused knew that the deceased was a handicapped person. The learned deputy also cited to this court a few decided cases and submitted that a sentence of not less than 18 years be imposed on the respondent.

[13] I had referred to those cases cited by both parties in support of their respective submissions and I did not even pretend to paraphrase all of them. I will refer to a few of them in the course of my judgments as indeed I had found some them to be extremely helpful in this onerous task which I had to undertake judiciously. The true value of decided cases in criminal proceedings has been succinctly put in perspective, and described as follows: 'Criminal cases cannot be put in a straightjacket. Though, there may be similarity between the facts of some cases, there would always be shades of difference, quite often that difference may prove to be crucial. The same can also be said about the evidence adduced in one case and that produced in another. Decided cases can be of help if there be a question of law like the admissibility of evidence. Likewise, decided cases can be of help if the question be about the applicability of some general rule of evidence eg the weight to be attached to the evidence of an accomplice. This apart, reference to decided cases is hardly apposite when the question before the court is whether the evidence of a particular witness should or should not be accepted.' (see *Charan Singh v State of Punjab* AIR 1975 SC 255; 1974 Cr LJ 1253. Viewed in that light, the cases cited by parties on principles on sentencing would to my mind be immediately relevant whereas the rest would be useful guides as to how the courts had applied them to peculiar circumstances of each such case. The principles on sentencing are well settled.

[14] Having said that, for the present moment however, suffice it is for me to say here that this court would not be able to accede to the requests made by both parties before me, given the circumstances of this case. To have acceded to the respondent's/accused's request would be unjustifiably too

lenient whereas to have acceded to the learned deputy's request would be unduly too harsh. Both requests to my mind, bordered on being unreasonable, to say the least.

[15] This case before me, just like all cases, must really be decided on its own set of facts. The question is, given the facts and circumstances of this case, how should the accused be sentenced? Of all the cases cited by both parties, I had thought that the case of *Ralon bin Banas v Public Prosecutor* [2000] 3 MLJ 241, cited by the learned deputy to be quite instructive and deserved special mention. In that case, the Court of Appeal had deemed it fit to confirm the sentence of 15 years imprisonment that had been imposed on the accused person by the High Court judge, for causing the death of the deceased whom the accused had killed in a circumstance more brutal and chilling than in this case. In that case, the accused/appellant had shot the deceased with a service revolver in front of the deceased's mother who, according to the facts adduced as recited in the report of the judgment, had pleaded for mercy from the accused person not to shoot his son (the deceased) but to no avail. The accused/appellant in that case had ignored such pleas and instead he kept saying repeatedly, 'tembak mati'. The sin that was committed by the deceased in *Ralon*'s case had been that he had allegedly broken a pair of spectacles belonging to the accused, who was then a serving police Sargeant in Keningau, Sabah. To 'aggravate' the situation further, the deceased had caused a superficial wound on the right hand of the Sargeant/accused. For those apparently trivial matters the deceased had paid dearly indeed. The Sargeant/accused had fired five shots at him but three were fatal with one penetrating the heart. Now, the circumstances leading to the death of the deceased in the *Ralon*'s case had been described by the learned justices sitting in judgment of the appeal as 'brutal and vicious'. Indeed, no one could have described it any other way. However, no one could in all honesty equate the intensity of the cruelty as shown by the facts as obtaining in the said *Ralon*'s as cited above with the facts that surrounded the case before me.

[16] In the case of *Public Prosecutor v Pujiono bin Kamsan & Ors* [2003] 5 MLJ 475, the court imposed imprisonment terms ranging from 10 years to 12 years on the three accused persons for causing the death of the deceased in circumstances more vicious than those revealed by the learned deputy in the case before me. Indeed as was rightly pointed out to me by learned counsel, there was no deadly weapon employed in this case.

[17] Nevertheless, I had still viewed the circumstances before me to be serious enough as to warrant a longish sentence against the accused/respondent. Lest we forget, a life had been lost and public interest required that an appropriate sentence commensurate with the offence be

meted out. At this juncture, it would be appropriate to recall the words of Hilbery J in the celebrated case of *R v Kenneth John Ball* (1951) 35 Cr App R 164, thus:

> A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeing to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible.

[18] It had been said by Wan Yahya J in the case of *Public Prosecutor v Nordin Kamsan & Ors* [1983] CLJ 669, thus:

> I am mindful of the fact that no term of imprisonment however long, imposed on the appellants can resuscitate the life of Private Dalbir Singh, but the public interest demands that they be adequately punished as a deterrence to both themselves and others.

[19] I had also reminded myself that although the legal concept of *lex talonis* had been effectively banished as a current underlying principle of sentencing, the words of Lawton LJ in the case of *R v Sarjeant* (1974) 60 Cr App R 74 at p 77 therein, are worthy of serious reflection. Those words are now reproduced thus:

> The Old Testament concept of an eye for an eye and a tooth for a tooth no longer plays any part in our criminal law. There is, however, another aspect of retribution which is frequently overlooked; it is that society, through the courts, must show its abhorrence of particular types of crimes and the only way the courts can show this is by the sentences they pass.

[20] Indeed, the sentences must be appropriate to the gravity of the offence (see *Chee Yong Choong v Public Prosecutor* [1964] 1 LNS 82.)

[21] In the context of this case before me, the accused may be a first offender but it is seldom that a person is a repeat or habitual killer.

[22] In the case of *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45, Visu Sinnadurai J, had held, among others that s 304 of the Penal Code gave the court a wide discretion to determine the term of imprisonment. However, the court must act judiciously and in accordance with the relevant sentencing practice in determining the sentence to be imposed. An important aspect of sentencing was the public interest. I would venture to add here that for that reason alone the criminal law was publicly enforced. The question that begged an answer here would be how to achieve a balance between the public interest and the interest of the accused person. But perhaps a more appropriate postulation or articulation of the question should be, how would

public interest be best served in dealing with the accused person in this case. That line of question would invariably ensure that the interest of the public will always remain paramount vis-a-vis the individual interest. Instead of pitting the two divergent interests at loggerhead with each other, such a question couched in that manner would always rank the individual interest a rung lower than the public interest. In other words, in the final analysis, the peculiar interest of the individual accused person will only be given its due consideration, if, by the court acceding to its demands, the wider interests of the public will be further enhanced, in the sense that some kind of benefits will accrue towards creating value for the public good. For instance, in an appropriate case a young first offender may be better off being subjected to a reform-based treatment. Not so much for his benefits alone, but with the realistic hope that a reformed offender may be able to contribute positively to his community having turned over a new leaf.

[23] Reverting back to the case before me, on the admitted facts, to my mind, any term of imprisonment below 10 years would be an injustice. Likewise, a term not less than 18 years would also occasion a similar failure of justice. Looking at the overall circumstances of this case, I would have imposed a sentence of about 15 years had this case gone on for full trial under s 304(a) of the Code and if this accused had been found guilty. But, he had the good sense of pleading guilty and that counts as a credit working in his favour. I am minded of the cases which said that there is no rule in our law books that says that a every plea of guilty would automatically entitle the accused to a certain discount relating to imprisonment term that may be imposed against him and at the same time would disentitle the court from imposing on him the maximum sentence allowed by the law. A discount is not a matter of right to be handed down by the court to any accused who had pleaded guilty. A discount is to be earned on the merits of each case. Indeed, Augustine Paul J (as he then was) in the case of *Pendakwa Raya lwn Ooi Kwang Lai* [2000] 6 MLJ 622, when discussing this issue of discount, had cited, inter alia, the case of *R v Costen* (1989) 11 Cr App R (S) CA 182, where Lord Lane had this to say therein:

> But there are certain exceptions, likewise well authenticated in the authorities, to that general rule that a discount will be allowed for a plea of guilty. The first and the most important exception is the protection of the public. Where it is necessary that a long sentence, if necessary the maximum sentence, should be passed in order to protect the public, in those circumstances a plea of guilty may not result in any discount.

[24] In other words, the criminal conduct of the accused viewed from the public interest then prevailing, may well disentitle him from the 'privilege' of a discount in terms of a reduced sentence. Applying this principle to the facts of the present case, I believe that the conduct of the accused person, taken as

a whole would not have forfeited his 'privilege' to a discount. As such, applying the principle in *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167, I had deducted about a quarter of that sentence of 15 years which would have been imposed had the accused been found guilty after a full trial. Therefore, a sentence of 12 years would in all probabilities, in my considered opinion, be a just and appropriate sentence to be imposed on this accused person. That sentence, I had gathered, would best serve the required public interest. I had declared this sentence in open court on the day of sentence and for it to take effect on the day of his arrest. I had also ordered that the exhibits that had been tendered to be dealt with according to law.

Accused convicted.

Reported by Dipendra Harshad Rai